

## 1 SENATE BILL NO. 191

2 INTRODUCED BY O'NEIL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DESTRUCTION OF UNSUBSTANTIATED  
5 REPORTS OF CHILD ABUSE OR NEGLECT; DEFINING "UNSUBSTANTIATED"; AND AMENDING SECTIONS  
6 41-3-102 AND 41-3-202, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 **Section 1.** Section 41-3-102, MCA, is amended to read:11 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

12 (1) "Abandon", "abandoned", and "abandonment" mean:

13 (a) leaving a child under circumstances that make reasonable the belief that the parent does not intend  
14 to resume care of the child in the future;15 (b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting  
16 to the child and the person having physical custody of the child a firm intention to resume physical custody or  
17 to make permanent legal arrangements for the care of the child;18 (c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable  
19 efforts to identify and locate the parent have failed; or20 (d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30  
21 days old to an emergency services provider, as defined in 40-6-402.

22 (2) "A person responsible for a child's welfare" means:

23 (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the  
24 child resides;

25 (b) a person providing care in a day-care facility;

26 (c) an employee of a public or private residential institution, facility, home, or agency; or

27 (d) any other person responsible for the child's welfare in a residential setting.

28 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or  
29 neglect.

30 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized

1 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding  
2 of medically indicated treatment or medically indicated psychological care permitted or authorized under state  
3 law.

4 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole  
5 reason that a parent or legal guardian, ~~due to~~ because of religious beliefs, does not provide adequate health  
6 care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the  
7 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm  
8 to the child.

9 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs  
10 of the child and any other factor considered by the court to be relevant to the child.

11 (6) "Child" or "youth" means any person under 18 years of age.

12 (7) (a) "Child abuse or neglect" means:

13 (i) actual harm to a child's health or welfare;

14 (ii) substantial risk of harm to a child's health or welfare; or

15 (iii) abandonment.

16 (b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person  
17 responsible for the child's welfare.

18 (c) The term does not include self-defense, defense of others, or action taken to prevent the child from  
19 self-harm that does not constitute harm to a child's health or welfare.

20 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the  
21 same time developing and implementing an alternative permanent plan.

22 (9) "Department" means the department of public health and human services provided for in 2-15-2201.

23 (10) "Family group conference" means a meeting that involves family members in either developing  
24 treatment plans or making placement decisions, or both.

25 (11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other  
26 person responsible for the child's welfare:

27 (a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological  
28 abuse or neglect;

29 (b) commits or allows to be committed sexual abuse or exploitation of the child;

30 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child was

1 abused or neglected by a parent or person responsible for the child's welfare;

2 (d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or  
3 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered  
4 financial or other reasonable means to do so;

5 (e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare  
6 by failing to intervene or eliminate the risk; or

7 (f) abandons the child.

8 (12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438  
9 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who  
10 is 18 years of age or older.

11 (13) "Parent" means a biological or adoptive parent or stepparent.

12 (14) "Parent-child legal relationship" means the legal relationship that exists between a child and the  
13 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been  
14 terminated by competent judicial decree, as provided in 40-6-234, Title 42, or part 6 of this chapter.

15 (15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement  
16 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living  
17 arrangement until the child reaches 18 years of age.

18 (16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting  
19 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone  
20 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or  
21 death.

22 (17) "Physical neglect" means either failure to provide basic necessities, including but not limited to  
23 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to  
24 weather conditions, or failure to provide cleanliness and general supervision, or both.

25 (18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are  
26 injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence  
27 against another person residing in the child's home.

28 (19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that  
29 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to  
30 the person.

1 (20) "Residential setting" means an out-of-home placement where the child typically resides for longer  
2 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

3 (21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
4 indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45,  
5 chapter 5.

6 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while  
7 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible  
8 for the child's welfare.

9 (22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution  
10 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of  
11 children, as described in 45-5-625.

12 (23) "Social worker" means an employee of the department who, before the employee's field  
13 assignment, has been educated or trained in a program of social work or a related field that includes cognitive  
14 and family systems treatment or who has equivalent verified experience or verified training in the investigation  
15 of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is  
16 not in this chapter.

17 (24) "Treatment plan" means a written agreement between the department and the parent or guardian  
18 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or  
19 guardian that resulted in the need for protective services for the child. The treatment plan may involve court  
20 services, the department, and other parties, if necessary, for protective services.

21 (25) "Unfounded" means that after an investigation, the investigating person has determined that the  
22 reported abuse, neglect, or exploitation has not occurred.

23 ~~(26) "Unsubstantiated" means that after an investigation, it has not been determined~~ THE INVESTIGATOR  
24 WAS UNABLE TO DETERMINE BY A PREPONDERANCE OF THE EVIDENCE that the reported abuse, neglect, or exploitation  
25 has occurred.

26 ~~(26)~~(27) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's  
27 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,  
28 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in  
29 ameliorating or correcting the conditions.

30 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,

1 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

2 (i) the infant is chronically and irreversibly comatose;

3 (ii) the provision of treatment would:

4 (A) merely prolong dying;

5 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

6 (C) otherwise be futile in terms of the survival of the infant; or

7 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the

8 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(26)~~ (27), "infant"

9 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously

10 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference

11 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when

12 an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding

13 medical neglect of children 1 year of age or older.

14 ~~(27)~~(28) "Youth in need of care" means a youth who has been adjudicated or determined, after a

15 hearing, to be or to have been abused, neglected, or abandoned."

16

17 **Section 2.** Section 41-3-202, MCA, is amended to read:

18 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or

19 neglected, the department shall promptly assess the information contained in the report and make a

20 determination regarding the level of response required and the timeframe within which action must be initiated.

21 If the department determines that an investigation is required, a social worker, the county attorney, or a peace

22 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of

23 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,

24 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial

25 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation

26 under this section, a social worker may not inquire into the financial status of the child's family or of any other

27 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance

28 programs or to comply with the provisions of 41-3-446.

29 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report

30 is received. However, the investigation must within 48 hours develop independent, corroborative, and

1 attributable information in order for the investigation to continue. Without the development of independent,  
2 corroborative, and attributable information, a child may not be removed from the home.

3 (3) The social worker is responsible for assessing the family and planning for the child. If the child is  
4 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable  
5 medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence  
6 and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview  
7 is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the  
8 child. The interview may be conducted in the presence of the parent or guardian or an employee of the school  
9 or day-care facility attended by the child.

10 (4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape  
11 or videotape with audio track must be made available, upon request, for unencumbered review by the family.

12 (5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered  
13 abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may  
14 provide protective services to any other child under the same care. The department shall:

15 (i) after interviewing the parent or guardian, if reasonably available, document its determination  
16 regarding abuse or neglect of a child; and

17 (ii) notify the child's family of its investigation and determination, unless the notification can reasonably  
18 be expected to result in harm to the child or other person.

19 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the  
20 initial report is determined to be unfounded, the department and the social worker, county attorney, or peace  
21 officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect  
22 shall destroy all of their records concerning the report and the investigation. The destruction must be completed  
23 within 30 days of the determination that the child has not suffered abuse or neglect.

24 ~~\_\_\_\_\_ (c) If from the investigation it cannot be determined by a preponderance of the evidence that the child~~  
25 ~~has suffered abuse or neglect, the initial report is determined to be unsubstantiated. If another report of abuse~~  
26 ~~or neglect of the child or another child who is in the care of the same parent, guardian, or person having legal~~  
27 ~~custody is not filed and substantiated within 3 years of the date of the unsubstantiated report, the department~~  
28 ~~and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances~~  
29 ~~surrounding the initial allegations of abuse or neglect shall destroy all of their records concerning the~~  
30 ~~unsubstantiated report and the investigation within 30 days.~~

1           (C) (i) IF THE REPORT IS UNSUBSTANTIATED, THE DEPARTMENT AND THE SOCIAL WORKER WHO CONDUCTED THE  
2 INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING THE INITIAL ALLEGATIONS OF ABUSE OR NEGLECT SHALL  
3 DESTROY ALL OF THE RECORDS, EXCEPT FOR MEDICAL RECORDS, CONCERNING THE UNSUBSTANTIATED REPORT AND THE  
4 INVESTIGATION WITHIN 30 DAYS AFTER THE END OF THE 3-YEAR PERIOD STARTING FROM THE DATE THE REPORT WAS  
5 DETERMINED TO BE UNSUBSTANTIATED, UNLESS:

6           (A) THERE HAD BEEN A PREVIOUS OR THERE IS A SUBSEQUENT SUBSTANTIATED REPORT CONCERNING THE SAME  
7 PERSON; OR

8           (B) AN ORDER HAS BEEN ISSUED UNDER THIS CHAPTER BASED ON THE CIRCUMSTANCES SURROUNDING THE  
9 INITIAL ALLEGATIONS.

10           (ii) A PERSON WHO IS THE SUBJECT OF AN UNSUBSTANTIATED REPORT THAT WAS MADE PRIOR TO [THE EFFECTIVE  
11 DATE OF THIS ACT] AND AFTER WHICH A PERIOD OF 3 YEARS HAS ELAPSED WITHOUT THERE BEING SUBMITTED A  
12 SUBSEQUENT SUBSTANTIATED REPORT OR AN ORDER ISSUED UNDER THIS CHAPTER BASED ON THE CIRCUMSTANCES  
13 SURROUNDING THE INITIAL ALLEGATIONS MAY REQUEST THAT THE DEPARTMENT DESTROY ALL OF THE RECORDS  
14 CONCERNING THE UNSUBSTANTIATED REPORT AS PROVIDED IN SUBSECTION (5)(C)(I).

15           (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish  
16 a written report to the department and, upon request, to the family. Subject to ~~subsection~~ subsections (5)(b) and  
17 (5)(c), the department shall maintain a record system documenting investigations and determinations of child  
18 abuse and neglect cases.

19           (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or  
20 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the  
21 department through its local office."

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